IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 356 OF 2003

Shivaji Bayaji Shinde .... appellant

versus

The State of Maharashtra ... Respondent.

Shri D.G. Khamkar for the appellant
Shri V.B.Konde Deshmukh APP for Respondent.

CORAM; V.G. PALSHIKAR &
SMT.NISHITA MHATRE,JJ.

DATED; 17TH NOVEMBER, 2006.

JUDGMENT: (Per Palshikar, J.)

1. Being aggrieved by the judgment and order dated 5th September 2002 passed by the 1st Ad-hoc Addl.Sessions Judge, Baramati in Sessions trial No. 131 of 2000, the appellants named above have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record and reappreciated the evidence both oral and documentary on record.

3. The prosecution story is that the maternal aunt of the complainant P.w.1 is deserted by her husband and used to reside with the grandmother of P.w.1 since three years prior to the incident. The house of the accused is located in front of the house of the grandmother of the complainant P.w.1. It is alleged by the complainant that on 15-9-2000 at about 6.00 p.m. the accused under the influence of liquor abused her maternal aunt Vithavai and thereafter proceeded to his house. The complainant asked Vithabai as to why accused abused her. At that time Vithabai replied to her that it is the desire of the accused that Vithabi should maintain sexual relations with him, and further told her that accused uttered Vithabai that his wife is not cohabiting with him and Vithabai is also deserted by her husband and therefore Vithabai should maintain sexual relations with him. As Vithabai refused, the accused used to abuse her. On 17-2-2000 at about 11 a.m. accused abused Vithabai in filthy language and threatened her that he would see her till evening. Again at about 3.30 p.m. accused came to the house of the complainant armed with knife and called Vithabi to come out of the house. As soon as the complainant and Vithabai came out of the house, the accused suddenly caught hold of her heir and fell her on the ground and stabbed her with the knife on her chest. The accused repeatedly gave 3/4 blows of the knife. On hearing the

shouting of the complainant, her brother and mother came to the spot. Immediately after the attack accused ran away towards the river. On hearing hue and cry neighbouring people collected and someone shifted Vithabi to hospital. In the hospital doctor examined Vithabai and declared her dead. Then the complainant approached police stn. and lodged the report.

4. On the basis of the FIR, investigation was carried out and the accused was prosecuted. The prosecution examined 10 witnesses to prove its case and the accused examined one witness to prove the injuries on his person. On appreciation of the evidence on record, the learned Judge came to the conclusion of guilt as aforesaid, which order of conviction is assailed before us in this appeal. Shri Khamkar the learned advocate for the accused/appellant submitted that the impugned order of conviction is unsustainable in law for the following reasons:

i) All the witnesses are interested witnesses and there is no corroboration by independent witness.

ii) Two or three witnesses mentioned earlier that the incident being witnessed by one Bansode but he is not examined and therefore the prosecution has kept away from the court certain evidence which should have bore

in the decision of the case.

iii) Eye witness should not be believed because they talk only of 2/3 stab blows whereas the medical report shows that there were 10 stab injuries.

We have to examine these contentions in the light of our re-appreciation of evidence.

5. P.w.1 Vaishali is the niece of the victim Vithabai Machindra Nanaware. The victim was staying in the maternal home. This witness has narrated complete story on the basis of which the accused was prosecuted. According to her the accused was staying in the house opposite to hers and was making numerous adverse remarks towards the victim as she was not staying with her husband. He used to make abuse frequently and on 15-9-2000 also accused abused her. He again repeated the same on 17-9-2000 in the morning. That morning he was under the influence of liquor and in that continued influence at 3.30 p.m. he came in front of the house of Vithabai, abused her and asked her to come out of the house. Vithabai came out of the house with P.w.1. Then the accused caught hold her by heir, fell her on the ground and assaulted her with knife. On seeing this the witness shouted. Her mother, brother and others came out but the accused ran towards the river.

She then went to the police,lodged the complaint which is FIR Exh.12.

6. This witness is completely corroborated by her mother P.w.2 Jijabai. All material particulars are stated again by P.w.2. There is nothing in the cross examination of this witness which would require the testimony of this witness to be disbelieved. P.w.1 has deposed that when the victim was carried to the hospital the clothes of the victim were stained with blood. So also the clothes of this witness were stained with blood. We find corroboration on this count also. Clothes of the victim were seized and they were found with blood staines. The injury as disclosed by the post mortem corroborates with the injuries as stated by this witness in the deposition. Merely because P.ws.1 and 2 could not state the exact number of injuries, their evidence cannot be rejected.

7. Then the evidence of panch and investigating officer is there on record according to which, the knife was seized from the spot pointed out by the accused. It had blood stains. The prosecution has thus proved all the circumstances necessary for holding the accused guilty. There is eye witness account. This eye witness account is duly substantiated and corroborated by other testimony and recovery made. The

clothes of the accused were also seized. They were also having blood stains. In such circumstances the conclusion arrived at by the learned trial Judge cannot be faulted with. He has correctly appreciated the evidence and has correctly convicted the accused. We affirm all the findings made by the learned trial Judge. The findings are also same in our reappreciation of evidence. It is therefore not necessary to exhaustively deal with other evidence on record and the findings thereon since we are in full agreement with the findings recorded by the trial Judge.

8. In the result, the appeal fails and it is dismissed. The order of conviction and sentence passed by the trial court is hereby confirmed.

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